

JUN 11 1993

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June 11, 1993

BY HAND

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: MM Docket No. 92-266

Dear Ms. Searcy:

Please find enclosed, on behalf of the National Association of Telecommunications Officers and Advisors, et al., an original and nine copies of Opposition of Local Governments to the Stay Petitions Filed By InterMedia Partners and Daniels Cablevision, Inc., which are being filed pursuant to 47 C.F.R. § 1.45(d) in the Commission's proceeding in MM Docket No. 92-266.

Any questions regarding this submission should be referred to the undersigned.

Sincerely,

William E. Cook, Jr.
William E. Cook, Jr.

Enclosures

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JUN 11 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Implementation of Sections of
the Cable Television Consumer
Protection and Competition
Act of 1992

Rate Regulation

MM Docket No. 92-266

TO: The Commission

OPPOSITION OF LOCAL GOVERNMENTS TO STAY PETITIONS FILED
BY INTERMEDIA PARTNERS AND DANIELS CABLEVISION, INC.

The National Association of Telecommunications Officers and Advisors, the National League of Cities, the United States Conference of Mayors, and the National Association of Counties (collectively, the "Local Governments"), pursuant to 47 C.F.R. § 1.45(d), hereby oppose the Petition for Stay submitted by InterMedia Partners, L.P. on June 4, 1993 ("InterMedia Petition"), and the Motion For Stay filed by Daniels Cablevision, Inc. on June 9, 1993 ("Daniels Petition").

DISCUSSION

1. The Commission Should Deny the Stay Request

The Federal Communications Commission
("Commission") should deny the petitions filed by

InterMedia and Daniels for a stay of the effective date of the Commission's rate regulations. These petitions are just another in a series of efforts by the cable television industry to undermine or delay implementation of the rate regulatory scheme established by Congress and implemented by the Commission under Section 623 of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act").¹ Pub. L. No. 102-385, 106 Stat. 1460 (1992). The suggestion by InterMedia and Daniels that the Commission stay the effective date of Commission's rules until some indefinite date in the future would undermine the congressional goal of prompt rate relief to consumers.²

Moreover, the reasons advanced by InterMedia and Daniels for delaying the implementation of rate regulation are without merit. Although the Commission will not adopt federal cost-of-service regulations until a later date, the Commission chose not to prohibit cable operators from submitting such showings in the interim based on general cost-of-service principles. InterMedia

¹ See, e.g., the National Cable Television Association's Petition for Limited Stay of Effective Date filed on May 7, 1993; Petition for Stay filed by Dow, Lohnes & Albertson on May 12, 1993.

² Congress mandated prompt protection from unreasonable rates charged by cable operators to be put in effect no later than 180 days after enactment of the 1992 Cable Act, or by April 3, 1993. See Sections 623(h)(1) and

and Daniels do not advance convincing arguments as to why a cable operator's right to submit such showings is unacceptable. If a cable operator is not sure what a franchising authority may expect in terms of such a filing, it should seek guidance from the franchising authority prior to filing the submission. If a cable operator believes that a franchising authority imposed an unreasonably low rate based on its submission, both Section 623 and the Commission's regulations grant the cable operator the right to appeal such a decision. See, e.g., Section 623(b)(5)(B); 47 C.F.R. § 76.944 (to be codified).

InterMedia suggests in two footnotes in its petition that the Commission need not stay the Commission's rules "with respect to the franchise authority certification process." InterMedia Petition at 1 n.1. See InterMedia Petition at 19 n.11. However, InterMedia does not clarify what it means by the "certification process" and what actions franchising authorities may take once they are certified. Moreover, InterMedia does not suggest what purpose certification will serve given that its stay request, if granted, would prohibit franchising authorities from enforcing, or taking any other meaningful action under, the Commission's rate regulations. See, e.g., InterMedia Petition at 20-21. ("InterMedia requests that the

regulations requiring compliance with the benchmark levels and requiring the submission of cost of service showings as the only alternative to justify existing above-benchmark rates, be stayed pending the outcome of the NPRM on cost of service standards").

In the event the Commission grants the stay request by InterMedia and Daniels, the Local Governments are not opposed to permitting franchising authorities to file certifications during the stay period and to become certified. However, to ensure that franchising authorities retain their full power to establish reasonable basic service rates once the Commission's regulations become effective, the Commission must stay the time periods by which franchising authorities must take actions following certification or notice to a cable operator of their right to regulate (e.g., the 120-day period to adopt local regulations following certification; the period for reviewing a cable operator's initial rate petition). For franchising authorities that are certified during the stay period, such time periods should not begin to run until after the effective date of the Commission's rules.

2. If the Commission Stays the Effective Date,
the Commission Must Continue the Rate Freeze
For 120 Days After Such Date

While the Local Governments strongly oppose any stay of the effective date of the new rate regulations

based on the grounds advanced by InterMedia and Daniels, if the Commission decides to grant the stay petitions, then the Local Governments agree with InterMedia that the Commission also must extend the freeze period during the pendency of a rulemaking on federal cost-of-service standards. However, the Local Governments believe that the freeze also must continue for a period after the Commission's rate regulations become effective in order to ensure that cable operators are not able to undermine the regulations during the transition period of implementing the Commission's regulations.

As the Commission noted in adopting the rate freeze, the main purpose of the Commission's rate freeze order is to alleviate the Commission's concern that

during the period between the adoption of our rules and the date that a local franchising authority can establish regulation of the basic service tier rates, and that consumers can file complaints with the Commission concerning potentially unreasonable rates for cable programming services, cable operators could raise rates, effectively undermining the statutory purpose of reasonable rates pending implementation of our rules.

Order, 58 Fed. Reg. 17530 (Apr. 5, 1993). If the effective date of the Commission's rate regulations coincided with the end of the rate freeze, this purpose

-- and the benefit of the rate freeze -- would be undermined.³

Moreover, the benefit of the rate freeze would be undermined during the freeze period itself if the Commission permitted cable operators to adjust their frozen rates for inflation and to recoup "external costs" beginning on January 1, 1994, as suggested by InterMedia. InterMedia Petition at 21 n.12. The Commission has estimated that most of the nation's cable subscribers should experience rate reductions once the Commission's regulations become effective. Given the Commission's assumption that most of the nation's subscribers are already paying unreasonable rates, the Commission should not compound the unreasonableness of such rates by permitting rate increases during the freeze period. The rate freeze would become a "rate

³ For example, under the Commission's rate rules, franchising authorities may not file certification requests until the current effective date of the Commission's rules -- or until June 21, 1993. Such certifications do not become effective until 30 days later -- assuming they are not disapproved by the Commission. If the Commission terminated the rate freeze on the date the rate regulations become effective, cable operators would have an unrestricted right to impose rate increases on subscribers during this 30-day period. For a further explanation of why it is essential for the Commission to extend the rate freeze for a period after its rate regulations become effective, please see the attached Opposition of Local Governments to the Stay Petition Filed By the National Cable Television Association, which the Local Governments filed in this proceeding on May 14, 1993.

freeze" in name only if cable operators were actually permitted to raise rates in the manner suggested by InterMedia.

If, as InterMedia and Daniels propose, the effective date of the Commission's rate regulations becomes the 30th day after the Commission adopts cost-of-service standards, then the Commission should extend the rate freeze for an additional 120 days after such effective date in order to achieve the Commission's goal of preventing cable operators from raising rates and undermining the rate regulations "during the period between the adoption of our rules and the date that a local franchising authority can establish regulation of the basic service tiers rates, and that consumers can file complaints." Order, 58 Fed. Reg. 17530.

CONCLUSION

For the foregoing reasons. the Local Governments

increases, and not to permit cable operators to raise rates during the freeze period.

Respectfully Submitted,


Norman M. Sinel
Norman M. Sinel

CERTIFICATE OF SERVICE

I, William E. Cook, Jr., an associate at the firm of Arnold & Porter, hereby certify that on June 11, 1993, a copy of the foregoing OPPOSITION OF LOCAL GOVERNMENTS TO THE STAY PETITIONS FILED BY INTERMEDIA PARTNERS AND DANIELS CABLEVISION, INC. was served by first-class United States mail, postage prepaid, upon:

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William E. Cook